

J.Fw



DOCKET NO.: 270434US0PCT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

IN RE APPLICATION OF:

Naoyuki MORIYA, et al.

SERIAL NO: 10/531,463

GROUP: 1623

FILED: April 15, 2005

EXAMINER:

FOR: COMPOSITION CONTAINING BETA-GLUCAN AND CONSTIPATION-  
RELIEVING DRUG, IMMUNOPOTENTIATOR AND SKIN MOISTENING  
AGENT USING THE COMPOSITION

**LETTER**

Mail Stop DD  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Submitted herewith is an International Preliminary Report on Patentability for the Examiner's consideration. The reference(s) cited therein have been previously filed with the International Search Report in an Information Disclosure Statement submitted to the U.S. Patent and Trademark Office on April 15, 2005.

Respectfully Submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.  
Norman F. Oblon

---

Corwin P. Umbach, Ph.D.  
Registration No. 40,211

Customer Number

**22850**

Tel. (703) 413-3000  
Fax. (703) 413-2220  
(OSMMN 10/05)

From the INTERNATIONAL BUREAU

**PCT**

NOTIFICATION OF TRANSMITTAL  
OF COPIES OF TRANSLATION  
OF THE INTERNATIONAL PRELIMINARY REPORT  
ON PATENTABILITY  
(CHAPTER I OR CHAPTER II  
OF THE PATENT COOPERATION TREATY)  
(PCT Rules 44bis.3(c) and 72.2)

To:

MATSUI, Shigeru  
Ginza Todoroki Bldg., 2nd Floor  
16-5, Ginza 8-chome  
Chuo-ku, Tokyo 104-0061  
JAPON

Date of mailing ( <i>day/month/year</i> ) 02 March 2006 (02.03.2006)	
Applicant's or agent's file reference PCT-AU-1	<b>IMPORTANT NOTIFICATION</b>
International application No. PCT/JP2004/002780	International filing date ( <i>day/month/year</i> ) 04 March 2004 (04.03.2004)
Applicant AUREO CO., LTD. et al	

**1. Transmittal of the translation to the applicant.**

- ☐ The International Bureau transmits herewith a copy of the English translation of the international preliminary report on patentability (Chapter I).
- ☒ The International Bureau transmits herewith a copy of the English translation of the international preliminary report on patentability (Chapter II).

**2. Transmittal of the copy of the translation to the designated or elected Offices.**

The International Bureau notifies the applicant that copies of that translation have been transmitted to the following designated or elected Offices requiring such translation:

EP, KR

The following designated or elected Offices, having waived the requirement for such a transmittal at this time, will receive copies of that translation from the International Bureau only upon their request:

AE, AG, AL, AM, AP, AT, AU, AZ, BA, BB, BG, BR, BW, BY, BZ, CA, CH, CN, CO, CR, CU, CZ, DE, DK, DM, DZ, EA, EC, EE, EG, ES, FI, GB, GD, GE, GH, GM, HR, HU, ID, IL, IN, IS, KE, KG, KP, KZ, LC, LK, LR, LS, LT, LU, LV, MA, MD, MG, MK, MN, MW, MX, MZ, NA, NI, NO, NZ, OA, OM, PG, PH, PL, PT, RO, RU, SC, SD, SE, SG, SK, SL, SY, TJ, TM, TN, TR, TT, TZ, UA, UG, US, UZ, VC, VN, YU, ZA, ZM, ZW

**3. Reminder regarding translation into (one of) the official language(s) of the elected Office(s).**

The applicant is reminded that, where a translation of the international application must be furnished to an elected Office, that translation must contain a translation of any annexes to the international preliminary report on patentability (Chapter II).

It is the applicant's responsibility to prepare and furnish such translation directly to each elected Office concerned within the applicable time limit (Rule 74.1). See Volume II of the PCT Applicant's Guide for further details.

The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland  Facsimile No.+41 22 740 14 35	Authorized officer  Masashi Honda  Facsimile No.+41 22 338 70 10
--	--

**Translation**

**PATENT COOPERATION TREATY**

**PCT**

**INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY**

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference <b>PCT-AU-1</b>	<b>FOR FURTHER ACTION</b>	See Form PCT/IPEA/416
International application No. <b>PCT/JP2004/002780</b>	International filing date ( <i>day/month/year</i> ) <b>04.03.2004</b>	Priority date ( <i>day/month/year</i> ) <b>07.03.2003</b>
International Patent Classification (IPC) or national classification and IPC		
Applicant <b>AUREO CO., LTD.</b>		

<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of <u>4</u> sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input checked="" type="checkbox"/> (sent to the applicant and to the International Bureau) a total of <u>1</u> sheets, as follows:</p> <p><input checked="" type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) _____, containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>
<p>4. This report contains indications relating to the following items:</p> <p><input checked="" type="checkbox"/> Box No. I Basis of the report</p> <p><input type="checkbox"/> Box No. II Priority</p> <p><input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p><input type="checkbox"/> Box No. IV Lack of unity of invention</p> <p><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p><input type="checkbox"/> Box No. VI Certain documents cited</p> <p><input type="checkbox"/> Box No. VII Certain defects in the international application</p> <p><input type="checkbox"/> Box No. VIII Certain observations on the international application</p>

Date of submission of the demand	Date of completion of this report
Name and mailing address of the IPEA/JP	Authorized officer
Facsimile No.	Telephone No.

## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/JP2004/002780

## Box No. I Basis of the report

1. With regard to the language, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following language \_\_\_\_\_ which is the language of a translation furnished for the purposes of:
- ☐ international search (Rule 12.3 and 23.1(b))
- ☐ publication of the international application (Rule 12.4)
- ☐ international preliminary examination (Rule 55.2 and/or 55.3)
2. With regard to the elements of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:
- ☐ the international application as originally filed/furnished
- ☒ the description:
- pages 1-17 as originally filed/furnished
- pages\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_
- pages\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_
- ☒ the claims:
- nos. 2, 3 as originally filed/furnished
- nos.\* \_\_\_\_\_ as amended (together with any statement) under Article 19
- nos.\* 1, 6-8 received by this Authority on 02.03.2005
- nos.\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_
- ☒ the drawings:
- sheets 1/7-7/7 as originally filed/furnished
- sheets\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_
- sheets\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_
- ☐ a sequence listing and/or any related table(s) – see Supplemental Box Relating to Sequence Listing.
3. ☒ The amendments have resulted in the cancellation of:
- ☐ the description, pages \_\_\_\_\_
- ☒ the claims, nos. 4, 5
- ☐ the drawings, sheets/figs \_\_\_\_\_
- ☐ the sequence listing (*specify*): \_\_\_\_\_
- ☐ any table(s) related to sequence listing (*specify*): \_\_\_\_\_
4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- ☐ the description, pages \_\_\_\_\_
- ☐ the claims, nos. \_\_\_\_\_
- ☐ the drawings, sheets/figs \_\_\_\_\_
- ☐ the sequence listing (*specify*): \_\_\_\_\_
- ☐ any table(s) related to sequence listing (*specify*): \_\_\_\_\_

\* If item 4 applies, some or all of those sheets may be marked "superseded."

## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/JP2004/002780

**Box No. V** Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

## 1. Statement

Novelty (N)	Claims	1-3, 6-8	YES
	Claims		NO
Inventive step (IS)	Claims	1-3, 6-8	YES
	Claims		NO
Industrial applicability (IA)	Claims	1-3, 6-8	YES
	Claims		NO

## 2. Citations and explanations (Rule 70.7)

Document 1: JP 2003-40785 A (Combi Corp.), 13 February 2002, entire document, claims 1, 3 and 7, embodiments 1 to 3 & CN 1386510 A & KR 2002/89149 A

Document 2: JP 2002-238494 A (Sunstar Inc.), 27 August 2002, entire document, especially claims, paragraphs [0030] to [0034], test examples 4 and 5 (Family: none)

Document 3: JP 2001-323001 A (Asahi Denka Kogyo Kabushiki Kaisha), 20 November 2001, entire document, claim 8, test example 2 (Family: none)

Document 4: WO 98/26787 A1 (Arnott's Biscuits Ltd.), 25 June 1998, entire document, claims, page 2, lines 4 to 12, examples & AU 9853961 B & 2001-506129 A

Document 5: JP 2002-531510 A (N.V. Nutricia), 24 September 2002, entire document, claim 3, example 4, WO 00/33854 A1 & AU 2000/18966 B & EP 1137424 A1

Document 6: JP 2001-354570 A (Ichimaru Pharcos Co., Ltd.), 25 December 2001, entire document, claim 4; paragraph [0055] (Family: none)

Document 7: JP 2001-231589 A (Kabushiki Kaisha Sofi), 28

## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/JP2004/002780

Box No. V

Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability;  
citations and explanations supporting such statement

August 2001, entire document, claims

(Family: none)

Document 8: JP 1-137990 A (Daiichi Togyo Kabushiki Kaisha), 30 May 1989, entire document, claims (Family: none)

Document 9: JP 61-146192 A (Satoshi Shinohara), 3 July 1986, entire document, claims; page 1, lower right column (Family: none)

Document 10: JP 10-310515 A (Tomoko Miki), 24 November 1998, entire document (Family: none)

Document 11: JP 62-205008 A (Kabushiki Kaisha Bio Bai Daimaru), 9 September 1987, entire document (Family: none)

Document 12: JP 2001-48796 A (Kabushiki Kaisha Advance), 20 February 2001, entire document (Family: none)

The use of a bacterium belonging to the genus *Aureobacidium* sp. as a culture containing  $\beta$ -1,3-1,6-glucan, and lactic acid bacterium *Enterococcus faecalis* which has been killed by heating together as active ingredients, thereby obtaining a  $\beta$ -glucan containing composition which is effective in physiologically active actions such as improving constipation, an immunopotentiator and a skin moistening agent, and which exhibits excellent uniform dispersibility of lactic acid bacterium as shown by the applicant in the comparative experimental data of the response to the written opinion, is not disclosed in documents 1 to 12 cited in the international search report, and would not be obvious to a person skilled in the art from these documents.